

**PT 03-18**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**NATIONAL ASSOCIATION  
FOR THE EXCHANGE OF  
INDUSTRIAL RESOURCES  
APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Nos: 01-PT-0037  
(00-48-0063)  
(00-48-0072)**

**P.I.N(S): 99-09-226-004  
99-16-326-008  
99-16-326-009**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Ms. Karen Kendall of Heyl, Royster, Voelker & Allen on behalf of the National Association for the Exchange of Industrial Resources. ("NAEIR" or the "applicant"); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

**SYNOPSIS:** These consolidated proceedings raise the following issues: first, whether applicant qualifies as an "institution of public charity" within the meaning of 35 ILCS 200/15-65(a); second, whether real estate identified by Knox County Parcel Index Numbers 99-09-226-004, 99-16-326-008 and 99-16-326-009 (hereinafter collectively referred to as the "subject properties") was owned by an "institution of public charity," as required by 35 ILCS 200/15-65(a) during the 2000 assessment year; third, whether the subject properties were "exclusively used for charitable or beneficent purposes ...," as required by 35 ILCS 15-65, during the 2000 assessment year; fourth, whether the subject properties qualify for exemption from 2000 real estate taxes under 35 ILCS 200/15-

65(b); and fifth, whether the subject properties qualify for exemption from 2000 real estate taxes under 35 ILCS200/15-65(c). The underlying controversies arise as follows:

Applicant filed two separate Applications for Property Tax Exemption, one pertaining to Parcel Index Numbers 99-09-226-004, the other pertaining to 99-16-326-008 and 99-16-326-009, with the Knox County Board of Review (the “Board”) on October 11, 2000. Dept. Ex. Nos. 2, 4. The Board reviewed these Applications and recommended to the Department that all of the requested exemptions be denied. *Id.*

The Department then issued its initial determination concerning Parcel Index Number 99-09-226-004 on March 22, 2001. Dept. Ex. No. 1. This determination denied the requested exemption on grounds that Parcel Index Number 99-09-226-004 was not in exempt ownership and not in exempt use.

On April 19, 2001, the Department issued its initial determination denying the requested exemptions for Parcel Index Numbers 99-16-326-008 and 99-16-326-009 on grounds that these properties were not in exempt ownership and not in exempt use. Dept. Ex. No. 3.

Applicant filed timely appeals to both determinations and later filed a motion for summary judgment, to which the Department filed a response and the applicant filed a reply. On November 1, 2002, I issued an Order denying applicant’s motion for summary judgment on grounds that there existed at least one issue of material fact which made summary judgment inappropriate under 735 ILCS 5/2-1005(c). Following issuance of this order, applicant presented evidence at a duly convened evidentiary hearing, at which the Department also appeared. Following submission of all evidence and a careful

review of the record made at hearing, I recommend that both of the Department's initial determinations be affirmed.

**FINDINGS OF FACT:**

A. Preliminary Considerations

1. The Department's jurisdiction over these consolidated matters, and its positions therein, are established by its initial determinations herein. Dept. Ex. Nos. 1, 3.
2. The Department's position relative to all of the subject properties, inclusive of Knox County Parcel Index Numbers 99-09-226-004, 99-16-326-008 and 99-16-326-009, is that they are not in exempt ownership and not in exempt use. *Id.*
3. Parcel Index Number 99-09-226-004 is located in Galesburg, Illinois and improved with at 70,625 square foot building that applicant uses as a storage and distribution center. Dept. Ex. No. 2.
4. Parcel Index Numbers 99-09-326-008 and 99-09-326-009 are located in Galesburg, IL and improved with a 450,000 square foot building that applicant uses as its main distribution center. Dept. Ex. No. 4; Tr. pp. 13, 29-30.

B. Applicant's Organizational & Financial Structures

5. NAEIR is a not for profit corporation, duly incorporated in the District of Columbia. Applicant Ex. No. 1.

6. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service in August of 1977. Applicant No. 11.
7. The Department issued applicant an exemption from Illinois use and related sales taxes on grounds that it “is organized and operated exclusively for charitable purposes,” within the meaning of Section 3-5(4) of the Use Tax Act (35 ILCS 105/1-1, *et seq.*), on May 19, 2000. Applicant Ex. No. 12; Administrative Notice.
8. Applicant’s Articles of Incorporation disclose that it is incorporated for the following purposes:
  - A. To acquire and receive, by purchase, gift, contribution, or otherwise, real and personal property, including but not limited to used and surplus industrial furniture, fixtures, and fixed assets of all types and descriptions;
  - B. To repair, renovate, rehabilitate, and improve the real and personal property so acquired and received; and,
  - C. To transfer, donate, contribute and convey such property to organizations and associations which are organized and operated exclusively for charitable, religious, scientific, literary or educational purposes which are exempt from federal income taxation by reason of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

Applicant Ex. No.1; Tr. p. 10.

9. Applicant's Articles of Incorporation further provide, *inter alia*, that "[t]he corporation shall have members[;]," which "shall be admitted to the corporation in the manner and upon payment of the fees, if any, provided in the by-laws, as they may be from time to time amended." *Id.*
10. Applicant's by-laws provide, *inter alia*, that:
- A. Each of the directors that govern applicant's daily business affairs shall be a members of the corporation;
  - B. Additional members may be elected by an affirmative vote of the majority of those sitting on applicant's board of directors;
  - C. Applicant's board of directors may, by majority vote, suspend or expel a member "for cause[;]"<sup>1</sup>
  - D. Applicant's board of directors may provide for issuance of certificates of membership evidencing membership in the corporation; and,
  - E. Applicant's fiscal year shall begin on July 1 of every calendar year and end on the ensuing June 30.

Applicant Ex. No. 2.

11. Applicant's federal return for its 2000 fiscal year indicates the following information about its financial structure:

REVENUES	AMOUNT	% of TOTAL <sup>2</sup>
Non-Cash Contributions		

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1. Applicant's by-laws do not define the term "for cause." Applicant Motion Ex. No. 2

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, \$136,194,335.00/\$148,052,334.00 = .9199 (rounded four places past the decimal) or 92%.

(Fair Cash Value of Goods Donated to Applicant)	\$ 136,194,335.00	92%
Membership Dues & Assessments	\$ 11,757,016.00	8%
Interest on Savings & Temp. Cash Investments	\$ 100,983.00	<1%
<b>TOTAL REVENUES</b>	<b>\$ 148,052,334.00</b>	
<b>EXPENSES</b>		
Program Services	\$ 132,911,360.00	98%
Management & General	\$ 1,452,023.00	1%
Fundraising	\$ 893,670.00	1%
<b>TOTAL EXPENSES</b>	<b>\$ 135,257,053.00</b>	

Applicant Motion Ex. No. 3.<sup>3</sup>

12. The federal return also contained the following information about applicant's expenses:

<b>EXPENSES</b>	<b>AMOUNT</b>	<b>% of TOTAL</b>
Grants & Allocations of Donated Goods (Fair Cash Value of Goods Donated by Applicant)	\$ 123,434,684.00	91%
Compensation of Officers, Directors, Etc.	\$ 716,237.00	1%
Other Salaries and Wages	\$ 2,717,109.00	2%
Pension Plan Contributions	\$ 244,329.00	<1%
Other Employee Benefits	\$ 684,273.00	1%
Payroll Taxes	\$ 221,386.00	<1%
Accounting Fees	\$	<1%

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3. Certain exhibits submitted as proofs in connection with applicant's motion for summary judgment, including the federal return and the audited financial statement (Applicant Motion Ex. 5, *see, infra*), were admitted as part of the hearing record by agreement of the parties. Tr. pp. 146-147.

	236,193.00	
Legal Fees	\$ 106,109.00	<1%
Supplies	\$ 430,510.00	<1%
Telephone	\$ 129,487.00	<1%
Postage & Shipping	\$ 3,819,685.00	3%
Occupancy	\$ 822,722.00	1%
Equipment & Maintenance	\$ 34,127.00	<1%
Printing & Publications	\$ 312,880.00	<1%
Travel	\$ 31,947.00	<1%
Conferences, Conventions & Meetings	\$ 119,082.00	<1%
Depreciation, Depletion, Etc.	\$ 513,551.00	<1%
Propane Fuel	\$ 7,737.00	<1%
Dues & Subscriptions	\$ 14,172.00	<1%
Professional Fees – Other	\$ 264,430.00	<1%
Special Deliveries	\$ 71,984.00	<1%
Donations	\$ 81,658.00	<1%
Computer Systems	\$ 67,115.00	<1%
Marketing Materials	\$ 66,120.00	<1%
<b>EXPENSES (Cont'd.)</b>	<b>AMOUNT</b>	<b>% of TOTAL</b>
NAIR Advantage (Newsletter Published Six Times Per Year)	\$ 102,367.00	<1%
Taxes & Licenses	\$ 7,159.00	<1%
<b>TOTAL EXPENSES</b>	<b>\$</b>	<b>100%</b>

	<b>135,257,053.00</b>	
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*Id.*

13. An audited financial statement for applicant's 2000 fiscal year reveals the following information:

<b>REVENUES</b>	<b>AMOUNT</b>	<b>% of TOTAL</b>
Product Inventory Contributions (Fair Cash Value of Goods Donated to Applicant)	\$ 136,194,335.00	92%
Membership Dues & Fees		
Initiation	\$ 38,261.00	<1%
New Members	\$ 425,578.00	<1%
Renewals	\$ 1,864,655.00	1%
Member Reinstatements	\$ 464,017.00	<1%
Total Membership Dues & Fees	\$ 2,792,511.00	2%
Transportation Fees	\$ 7,745,980.00	5%
Investment Income	\$ 100,623.00	<1%
Miscellaneous	\$ 68,525.00	<1%
Reimbursement for Expenses	\$ 1,150,000.00	1%
<b>TOTAL REVENUES</b>	<b>\$ 148,051,974.00</b>	<b>100%</b>
<b>EXPENSES</b>		
Expenses & Inventory Distribution		
Product Distribution Program (Fair Cash Value of Goods Donated by Applicant)	\$ 131,253,853.00	97%
Management and General	\$	1%



	1,452,023.00	
Membership	\$ 1,657,507.00	1%
Fundraising	\$ 893,670.00	1%
<b>TOTAL EXPENSES</b>	<b>\$ 135,257,053.00</b>	<b>100%</b>

Applicant Motion Ex. No. 5.

14. The member reinstatement fees that appear on this tax return are generally paid by organizations that wish to become members after allowing their memberships to lapse. Tr. p. 74.

C. Applicant's Membership Structure and Distributional Mechanisms

15. Applicant's paid membership for its 2000 fiscal year was comprised of the following:

<b>ORGANIZATION TYPE</b>	<b># OF ORGANIZATIONS</b>	<b>TOTAL DOLLAR VALUE OF GOODS DONATED BY APPLICANT TO ORGANIZATIONS</b>
Elementary Schools	109	\$ 2,361,627.00
Private or Religious Elementary or Junior High Schools	50	\$ 657,331.00
Public Junior High Schools	5	\$ 57,558.00
Public Senior High Schools	30	\$ 857,481.00
Private or Religious High Schools	33	\$ 425,478.00
Vocational or Technical Schools	5	\$ 27,029.00
Public School Districts	184	\$ 6258,354.00
Community Colleges	5	\$ 387,826.00

Colleges	19	\$ 623,874.00
Universities	7	\$ 203,635.00
Vocational or Technical Colleges or Universities	2	\$ 19,763.00
School (Not Specified)	38	\$ 292,826.00
Camps	7	\$ 232,234.00
Hospitals	32	\$ 815,663.00
Day Care	25	\$ 689,290.00
Nursing Homes or Extended Care Facilities	69	\$ 1,898,054.00
Churches or Religious Institutions	307	\$ 6,480,682.00
Libraries	11	\$ 242,431.00
Social Service Agencies	362	\$ 10,938,819.00
Prisons or Correctional Institutions	4	\$ 110,038.00
Law Enforcement or Public Safety Institutions	4	\$ 51,649.00
Municipalities (City or City Departments)	64	\$ 1,433,256.00
County Governments (All Departments)	13	\$ 524,460.00
State Government (All Departments)	2	\$ 31,383.00
<b>TOTAL</b>	<b>1,387</b>	<b>\$ 35,620,741.00</b>

Applicant Ex. No. 6.

16. Applicant's paid catalog membership fee structure for 2000 was as follows:

ANNUAL MEMBERSHIP FEE	BENEIFTS
\$575.00	<ul style="list-style-type: none"> <li>• Five consecutive merchandise catalogues from NAEIR;</li> <li>• One full year of access to applicant's on-line requesting service;</li> <li>• Approximately 70 separate "Member's Choice" special offer flyers over the course of the twelve month membership period;</li> <li>• Five visits to the "grab bag" area of applicant's warehouse, wherein applicant keeps items leftover from previous catalogues, for \$20.00 per visit;</li> <li>• The opportunity to receive additional 12 month memberships at the reduced membership fee of \$250.00 per membership.</li> </ul>
\$475.00	<ul style="list-style-type: none"> <li>• Four consecutive merchandise catalogues from NAEIR;</li> <li>• Ten months of access to applicant's on-line requesting service;</li> <li>• Approximately 60 separate special "Member's Choice" offer flyers over the course of the ten month membership period;</li> <li>• Four visits to the "grab bag" area of applicant's warehouse for \$20.00 per visit.</li> </ul>

Applicant Group Ex. No. 7; Applicant Group Ex. Nos. 10A, 10B.

17. Applicant also offers a lower-cost membership, which it calls "member's choice." Organizations in the "members choice" program pay an "initiation fee" of \$39.50, for which they receive catalogs on a quarterly basis and approximately 70 special offer sheets over the course of their year's membership. Tr. p. 62.

18. The quarterly catalogs that NAEIR provides to organizations enrolled in its "members choice" are about eight pages long, and smaller than the 200 page

catalogs received by organizations that purchase more costly memberships.  
Tr. pp. 59, 61-62.

19. Applicant had approximately 4,700 organizations, or 51% of its total membership, enrolled in its regular catalog program during the 2000 assessment year. It also had about 4,500 organizations, or 49% of its total membership, enrolled in its “members choice” program throughout that tax year. Tr. pp. 51-52.
20. Applicant receives donated goods for redistribution to its members by employing direct mailings and sales representatives to actively solicit donations of tangible personal property, usually surplus inventory, from approximately 3,000 businesses located throughout the United States. Applicant Motion Ex. 8; Tr. pp. 23, 46.
21. Businesses that donate their surplus inventory to NAEIR become eligible to take the deduction provided for in Section 170(e)(3) of the Internal Revenue Code. *Id.*; Tr. p. 21.
22. Section 170(e)(3) of the Internal Revenue Code, 26 USCA § 170(e)(3), provides, in substance, that corporations may receive a federal tax deduction for donating merchandise to organizations that qualify for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code (26 USCA § 501(c)(3)),<sup>4</sup> provided that: (a) the use of the property by the donee is

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4. Section 501(c)(3) of the Internal Revenue Code provides as follows:

**§ 501. Exemption from tax on corporations, certain trusts, etc.**

related to the purpose or function constituting the basis for its exemption under section 501(c)(3); and, (b) the property is to be used by the donee solely for the care of the ill, the needy, or minors; (c) the property is not transferred by the donee in exchange for money, other property, or services; and, (d) the taxpayer-donor receives from the donee a written statement representing that its use and disposition of the property will be in accordance with conditions (a) and (b); and, (e) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto. 26 USCA § 170(e)(3); Tr. pp. 21, 27, 49-50.

23. In accordance with 26 USCA § 170(e)(3), applicant distributes the goods that it collects only to organizations that either: (a) qualify for exempt status under

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(a) Exemption from taxation.--An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under Section 502 or 503.

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(c) List of exempt organizations.--The following organizations are referred to in subsection (a):

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(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 USCA § 501(c)(3).

Section 501(c)(3) of the Internal Revenue Code; or, (b) are duly constituted schools, school districts or other governmental agencies. Applicant Ex. No. 6. Tr. pp. 49-50.

24. Applicant has terminated memberships for misusing products, or using donated merchandise for purposes other than care of the ill, needy or minors. Applicant does, however, have a procedure that allows for reconsideration of any membership that it has terminated. Tr. p. 75.
25. Applicant distributes approximately 75% to 80% of the donated merchandise that it receives through its catalog of available items, which it publishes five times per year. Tr. p. 33, 50-51.
26. Items in the catalog, which averages about 200 pages, usually include sections of office supplies, janitorial supplies, maintenance supplies, seasonal items and sporting goods. Tr. pp. 58-59.
27. NAIER provides members who pay either the \$575.00 or \$475.00 membership with this 200-page catalog in accordance with the terms and conditions of their respective memberships. It also provides, on a quarterly basis, a smaller catalog of approximately 8 pages to organizations enrolled in its members choice program.<sup>5</sup> Tr. pp. 59, 61.
28. Approximately 70% of applicant's catalog members renew their memberships on an annual basis. However, applicant guarantees that it will refund the membership fee paid by any organization that does not receive property

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5. See, Findings of Fact 16-18, *supra*.

valued at two times the published catalog value of the membership fee paid by that organization. Tr. pp. 64-65.

29. The average NAEIR member receives \$18,000.00 per year in donated merchandise. There are, however, some<sup>6</sup> members that receive much more than that. Tr. p. 65.

30. Applicant does not limit the number of items that each organization may request or receive through the catalogue. It does, however, employ a computer program to determine distribution of over-subscribed items. Tr. p. 65.

31. Applicant makes an on-line requesting service, which it calls "NAEIR Express," available to organizations that pay its \$575.00 and \$475.00 membership fees. Applicant Group Ex. No. 7; Applicant Group Ex. Nos. 10A, 10B; Tr. p. 60.

32. NAEIR offers products that are in high demand, but low supply, on NAEIR Express. Tr. p. 60.

33. Applicant assures members who request items from NAEIR Express that they will receive their merchandise, provided that the members pay applicant a handling charge<sup>7</sup> for the merchandise and any applicable UPS shipping charges. Tr. p. 61.

34. Applicant seeks new members by direct mailings, of which it sends out about 60,000 pieces per month. Tr. p. 66.

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6. The record does not specify exactly how many member organizations received more than \$18,000 in donated merchandise.

7. The record does not contain any evidence that specifies the amount of this handling charge.

35. Applicant sends these direct mailing pieces to churches, schools and other Section 501(c)(3) non-profit organizations, which can respond by sending back a postcard that is attached to the mailing. *Id.*
36. Member organizations that receive donations from applicant can either pick up their merchandise at one of the subject properties or pay the administrative fees for transportation that applicant arranges. Tr. p. 13.
37. None of applicant's organizational documents, inclusive of the articles of incorporation and by-laws that were in effect throughout the 2000 assessment year,<sup>8</sup> contained any language that waived or reduced the financial obligations that its members must pay. However, on September 2, 1995, applicant's board of directors passed a resolution approving the following financial hardship waiver:

Upon request in writing by a proposed or current member, the financial hardship committee will review any request for waiver of the year's membership dues, initiation fees and/or administrative fees, based upon financial hardship. The financial hardship committee will grant a waiver of all or a portion of such dues and fees for the year the waiver is requested, upon showing by the proposed or current member that it is unable, based upon financial hardship, to pay such dues and/or fees for the year.

Any proposed or current member who intends to seek a financial hardship waiver of its membership dues and/or fees for its fiscal (membership) year must do so 60 days prior to the date the membership dues for the year would be due from the member. Along with its request for waiver of the dues or fees, the proposed or current member must provide a copy of its current financial statements or similar reports, including a current balance sheet and income statement. The waiver request must also contain a detailed statement setting forth the reasons supporting the request for the waiver or fees.

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8. Applicant offered an amendment to its by laws, dated February 11, 2003, into evidence. This document (Applicant Ex. No. 2C), was excluded as irrelevant pursuant to the Department's objection. Tr. pp. 19-20. *See also, infra*, at pp. 34-35.



Any waiver of dues or fees will only be applicable for the year requested. A new waiver request must be filed for each year a proposed or current member requests a waiver. Any waiver of membership dues, initiation fees or administrative fees will not eliminate a proposed or current member's responsibility for any applicable shipping charges associated with the shipment of donated merchandise.

Applicant Ex. No. 2B.

38. Applicant sends any organization interested in receiving a financial hardship waiver the informational packet that includes a cover letter which states, *inter alia*, that:

Attached is a short form that we ask Financial Hardship Waiver applicants to complete. Return this form, a copy of your most recent financial statements (if available) and a letter telling us a little about your organization, your mission, your programs, the number of individuals that you serve, etc.

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After reviewing the information provided, we will get back with you to let you know the status of your financial hardship waiver request. All applicants will receive a response.

Applicant Ex. No. 9.

39. Applicant periodically sends out a membership survey that contains information about the availability of its financial hardship waiver. Applicant

Group Ex. No. 10B.

40. Organizations that apply for a waiver may seek to have either their membership fees or their administrative shipping charges waived. They can also apply for a waiver of both membership fees and handling charges. Tr. pp. 76-77.

41. Applicant refers all completed waiver applications to an internal committee that is chaired by its chief financial officer. This committee meets on a quarterly basis, reviews the applications and decides what, if any, waiver will

42. Applicant granted financial hardship waivers to 21 organizations during 2000.<sup>9</sup> Applicant Motion Ex. No. 10.

43. Applicant donated \$507,597.00 worth of goods to the 21 organizations that received financial hardship waivers during 2000. *Id.*

D. Employee Compensation

44. Cash compensation<sup>10</sup> paid to applicant's top five officers during its 2000 and 2001 fiscal years was as follows:

<b>OFFICER</b>	<b>TOTAL CASH COMPENSATION PAID DURING APPLICANT'S 2000 FISCAL YEAR</b>	<b>TOTAL CASH COMPENSATION PAID DURING APPLICANT'S 2001 FISCAL YEAR</b>
CEO	\$243,860.00	\$257,110.00
VP- CFO/CAO/Comptroller	\$104,762.00	\$118,141.00
VP-CIO	\$110,474.00	\$119,221.00

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9. For a complete listing, *see*, Applicant Motion Ex. No. 10.

10. "Cash compensation," as defined by the applicant's outside compensation consultant and expert witness on compensation, Michael Lew, CPA, JD, consists only of base salary and bonus. It does not include benefits. Tr. pp. 108-110, 139-140.

Mr. Lew testified that, for present purposes, the term "cash compensation" does not include benefits because the market surveys on which he based his testimony only included information on base salary and bonus. *Id.*

VP-Corporate Relations	\$118,707.00	\$130,678.00
VP-Distribution	\$108,914.00	\$0.00 <sup>11</sup>

Applicant Group Ex. No. 17B; Tr. p. 126.

45. The levels of total cash compensation paid to applicant's top five officers<sup>12</sup> relative to median levels of cash compensation reflected on market surveys used by applicant's outside compensation consultant was as follows:

<b>OFFICER</b>	<b>TOTAL CASH COMPENSATION PAID TO OFFICERS AS A PERCENTAGE OF MARKET MEDIAN FOR APPLICANT'S 2000 FISCAL YEAR</b>	<b>TOTAL CASH COMPENSATION PAID TO OFFICERS AS A PERCENTAGE OF MARKET MEDIAN FOR APPLICANT'S 2001 FISCAL YEAR</b>
CEO	93%	94%
VP-CFO/CAO/Comptroller	86%	93%
VP-CIO	101%	105%
VP-Corporate Relations	96%	101%
VP-Distribution	90%	N/A <sup>13</sup>

11. Applicant's Vice President of Distribution left his employment at NAIER at the end of its 2000 fiscal year. No replacement was hired and his responsibilities were divided among other corporate officers. Applicant Group Ex. No. 17B.

12. Applicant did not submit evidence relative to any of its other employees.

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Applicant Group Ex. No. 17B.

46. Applicant has a bonus incentive program in place for its officers. Tr. pp. 106, 132-133.

47. Bonuses for all NAIER officers except its president are determined by applicant's governing board, which acts on recommendations that are based on performance reviews conducted by applicant's president. Tr. pp. 104-106.

48. Applicant's governing board is solely responsible for determining the president's bonus. Applicant's president is excused from that portion of the meeting wherein his bonus is discussed. Tr. pp. 104-105.

E. Ownership and Use of the Subject Properties

49. Applicant obtained ownership of parcel index number 99-09-226-004, which applicant refers to as its "Associate Distribution Center" ("ADC"), by means of a warranty deed dated November 28, 1994. Dept. Ex. No. 2; Applicant Ex. No. 4A; Tr. p.13.

50. Applicant used the ADC for storage and distribution of some of its donated goods throughout the 2000 assessment year.<sup>14</sup> *Id.*

51. Members who could not afford or did not wish to incur freight charges were able to alleviate such charges by picking up their merchandise at the ADC. Applicant Ex. No. 3; Tr. pp. 13, 33.

52. The ADC also contains NAEIR's "grab bag area." Tr. p. 33.

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13. See, footnote 11, *supra*.

14. The uses described in this and all subsequent findings of fact shall be understood to mean uses that took place during the 2000 assessment year unless context clearly specifies otherwise.

53. Applicant obtained ownership of parcel index numbers 99-16-326-008 and 99-16-326-009, which applicant refers to as its “Main Distribution Center” (“MDC”), by means of a quit claim deed dated September 10, 1985. Applicant Ex. No. 4B.
54. The MDC is divided into four sections: an office and support staff area, a receiving dock area, a sorting and processing area and a shipping area. Applicant Ex. No. 3; Tr. p. 29-33.
55. Applicant used the office and support staff area to solicit contributions of donated merchandise. Tr. p. 30.
56. Applicant used the receiving dock area for intake and identification of donated merchandise. Tr. p. 30.
57. Applicant used the sorting and processing area to prepare donated merchandise, much of which comes in bulk quantities that must be repackaged into smaller units, for redistribution. Tr. pp. 32-33.
58. Applicant used the shipping area to pack and send shipments of donated merchandise to member recipients. Tr. p. 33.

**CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, which states as follows:

**200/15-65. Charitable Purposes**

§ 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficial purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious, or beneficial activities of the owner, whether or not such activities occur on the property;
- (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65(a), (b), (c).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. the Ass'n of

the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, any and all doubts that arise in an exemption proceeding, whether they be attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. *Id.*

A. Exemption Under 35 ILCS 200/15-65(a)

The statutory requirements for exemption under Section 15-65(a) of the Property Tax Code are that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” 35 ILCS 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

1. Exempt Ownership

By definition, a charitable institution operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, *supra*.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Ass'n v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987)) or, (2) operates primarily in the public interest and lessens governmental burdens. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1<sup>st</sup> Dist. 2000)).

After carefully reviewing all of the evidence of record, I conclude that applicant does not qualify as a charitable institution because it provides significantly higher levels of service to organizations that pay full or near full membership fees than it does to organizations that pay reduced or no membership fees. Therefore, the business reality of the manner in which NAEIR conducts its operations is inconsistent with dispensation of “charity.”

NAEIR correctly asserts that merely charging fees or imposing similar monetary obligations does not, *ipso facto*, defeat exempt status so long as applicant accommodates those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975). Applicant offers that it provides organizations that are unable to pay full or near membership fees with access to some, but not all, of its services. However, the range of services that NAEIR provides to these organizations is quantitatively and qualitatively far less than the range of services it provides to organizations that pay full or near full fees.



For instance, organizations that pay the maximum \$575.00 annual membership fee receive, among other benefits, five consecutive membership catalogs, each of which contain at least 200 pages of merchandise listings. They also receive one full year of access to NAEIR's on-line ordering service and five visits to applicant's grab bag area.

In contrast, those that applicant accommodates through its "member's choice" program receive only one, eight page catalog per quarter. At the very least, this aspect of applicant's operations is inconsistent with the manner in which "charity" should be distributed under Methodist Old People's Home v. Korzen, *supra*, because it is based strictly on an entity's ability to pay for services rendered rather than gratuitous fulfillment of its demonstrated needs.

Moreover, the record fails to disclose that applicant provides organizations in the "member's choice" program with access to either the grab bag area or its on-line ordering service. This means that only those members paying the full membership fee have access to products that are in greatest demand and shortest supply.

Creating such privileges is, in this context, inconsistent with dispensation of "charity" because both the quality and quantity of the privileges received do not satisfy the definitional criteria of benefiting an "indefinite number of persons." Crerar v. Williams, *supra*; Methodist Old People's Home v. Korzen, *supra*. Rather, they benefit only the relatively limited number of persons or, in this case, organizations, that can afford to pay for them. However, even if this were not true, the record contains no evidence proving that applicant ever waived the \$20.00 fee that it charges for each use of the grab bag area. Accordingly, this aspect of applicant's operations does not qualify as

“charitable” because it is not available to applicant’s entire client pool irrespective of their ability to pay. Small v. Pangle, *supra*.

Based on the above, I conclude that applicant’s primary purpose is to provide heightened service privileges to those of its member organizations that can afford to pay full membership fees in exchange for the increased service privileges that they receive. NAEIR therefore fails to qualify as an “institution of public charity” because the primary focus of its operations is to confer an increasing level of benefits on that relatively narrow class of member organizations. *Accord*, Gas Research Institute v. Department of Revenue, *supra*. Although lesser memberships are allowed, the privileges associated with those memberships clearly reflect diminished status, in accord with the diminished membership payments.

Moreover, the acts of “charity” which applicant performs for those organizations that are unable to pay full fees are absolutely incidental to NAEIR’s main purpose. The \$507,597.00 in donated goods that applicant provided to organizations that received fee waivers during 2000 amounted to less than 1% of the \$123,434,684.00 in grant and allocation expenses shown on NAEIR’s federal tax return for that year.<sup>15</sup> Applicant Motion Ex. No. 3. They also constituted less than 1% of the \$131,253,853.00 in inventory distribution expenses shown on the audit report admitted as Applicant Motion Ex. No. 5.<sup>16</sup> Therefore, applicant’s own financial records demonstrate that it performs only incidental acts of charity.

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15.  $\$507,597.00 / \$123,434,684.00 = 0.0041$  (rounded) or <1%.

16.  $\$507,957.00 / \$131,253,853.00 = 0.0039$  (rounded) or <1%.

Performing such incidental acts is legally insufficient to qualify applicant as an “institution of public charity.” Gas Research Institute v. Department of Revenue, *supra*; Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956). Furthermore, an analysis of NAEIR’s financial structure reveals a distinctly commercial business operation.

The audited financial statement (Applicant Motion Ex. No. 5) proves that applicant receives significant cash revenues from transportation fees and reimbursement for other unspecified expenses. Applicant also imposes a mandatory handling charge, in addition to shipping charges for those much in demand goods offered on NAEIR Express. These revenue sources allow applicant to cover all of its operating costs, inclusive of employee compensation, while maintaining very significant surplus revenues of \$12,794,921.00.<sup>17</sup>

The mere fact that applicant’s financial records show a surplus may not be sufficient, in and of itself, to prevent NAEIR from obtaining exempt status. *See, Children's Development Center v. Olson*, 52 Ill. 2d 332 (1972). Nevertheless, the fact that applicant is able to maintain such a sizable surplus *at the same time as* it is able to comfortably cover many of its operating expenses through cash reimbursements from its clientele strongly suggests that dispensing “charity” is certainly not the primary focus of NAEIR’s enterprise.

Furthermore, it appears applicant’s officers profit from NAEIR’s enterprise in violation of the criteria articulated in Methodist Old People’s Home v. Korzen, *supra*. The performance-based incentive bonuses that NAEIR pays its officers undoubtedly provide these individuals with motivation to profit from applicant’s enterprise.

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17. \$148,051,974.00 (total revenues shown on audited financial statement) - \$135,257,053.00 (total expenses shown on audited financial statement) = excess revenues of \$12,794,921.00

Applicant's expert witness on compensation, Michael Lew, testified that such bonus structures are becoming increasingly commonplace in the non-profit sector. Tr. pp. 106, 132-133. Nevertheless, Illinois case law has yet to pass on whether such bonuses constitute the type of "profit or gain" prohibited under Methodist Old People's Home v. Korzen, *supra*.

The two leading cases on "profit or gain," People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970) and Lutheran General Health Care System v. Department of Revenue, 231 Ill. App.3d 652 (1<sup>st</sup> Dist. 1992), do not address the issue of performance-based incentive bonuses *per se*. However, in the Hopedale Medical Foundation case, it was held that the type of "profit or gain" prohibited under Methodist Old People's Home v. Korzen is that which inures to the benefit of one or more private individuals engaged in managing the applicant's enterprise. Hopedale Medical Foundation, *supra*, at 454.

The enterprise at issue in Hopedale Medical Foundation was essentially a private medical practice that yielded various entrepreneurial rewards, including consulting fees and profits generated through operation of a pharmacy, that inured to the benefit of the physician engaged in that practice, and his associates. Hopedale Medical Foundation, *supra*, at 463-464. The physician also: (a) exercised total control over virtually all aspects of the foundation's operations; (b) maintained continuing security-related claims against the foundation's assets, (c) received a salary of \$75,000.00 which the court found be "substantial" even though it was paid in increments ranging from \$10,000.00 to \$26,541.13 per year over a period of five years; and, (d) purchased groceries for his family's personal use using the non-profit foundation's sales tax exemption on occasions

when the foundation did not have sufficient funds to pay his salary. *Id.* at 450, 456-458, 463-464.

The compensation at issue in Lutheran General, *supra*, consisted solely of shares of stock that physicians employed by one of the appellees, a non-profit medical foundation, could purchase for \$20.00. *Id.* at 655. The physicians could only purchase one share of the stock, which conferred no ownership interest in the foundation, paid no dividends and did not appreciate in value during the course of the physician's employment. *Id.* at 655, 662. If the physicians' employment ended, then the foundation would purchase the physicians' share of stock for the original issue price of \$20.00. *Id.* The physicians did, however, retain the right to vote on administrative matters while they owned the stock. *Id.* at 662.

In comparing Lutheran General, where the court held that the compensation at issue did not constitute the type of pecuniary profit prohibited under Methodist Old People's Home v. Korzen, with Hopedale Medical Foundation, where the court held that the compensation at issue *did* violate that prohibition, it becomes apparent that it is the substance, and not the form, of the compensation that is decisive. Lutheran General, *supra*, at 662.

In practical terms, this means that an "institution of public charity" is not permitted to issue remuneration that either enables those associated with its enterprise to receive pecuniary rewards, such as consulting fees or profit distributions, traditionally reaped by private entrepreneurs (Hopedale Medical Foundation, *supra*) or, provides pecuniary gain that is directly tied to the financial performance of the enterprise, such as

that obtained through appreciating stock values or payment of stock dividends. (Lutheran General, *supra*).

The performance-based bonuses that NAIER pays are, by their very nature, incentives that provide increased monetary compensation to those who improve applicant's enterprise with increased revenues over expenses. Furthermore, the total cash compensation that applicant paid to its officers, which amounted to no less than \$104,762.00 in any one case and consisted of base salary and performance-based bonuses, cannot be described as anything but "substantial" regardless of the standard against which it is measured.

NAIER attempts to measure the reasonableness of the total cash compensation that it pays according to the medians of total cash compensation reflected on market surveys. Mr. Lew testified that, for purposes of his analysis, the term "total cash compensation" meant only base salary and bonus. Tr. pp. 108-110, 139-140. However, Mr. Lew's analysis fails to account for at least two expense items that also relate to employee compensation.

Each of these items, pension plan contributions and other employee benefits, appear as separate line item expenses on applicant's federal return. Applicant Motion Ex. No. 3. Thus, any analysis that excludes these expense items from the equation by which one seeks to measure the reasonableness of the *total* remuneration that applicant pays to its employees does not accurately reflect all elements of that remuneration. Therefore, Mr. Lew's analysis is flawed in this respect.

Moreover, any residual doubts that arise from conflicts or inconsistencies between the above analysis and Mr. Lew's testimony must be resolved in favor of taxation as a

matter of law. People Ex Rel. Nordland v. the Ass'n of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Consequently, the specific question of whether the types of performance-based incentives applicant pays to its officers constitute the type of “profit or gain” prohibited under the guidelines set forth in Methodist Old People’s Home v. Korzen, must be resolved against the applicant.

NAEIR also argues that its officers do not profit from its enterprise because applicant seeks to set the total cash compensation they receive at levels that are below median levels of compensation reflected on market data surveys. Tr. pp. 113-114, 12-124, 126-130, 133-134. *See also*, Applicant Ex. No. 17B. Once again, Illinois courts have not rendered any decisions that address this specific issue. However, the levels of compensation that applicant actually set, and not those which it intended to set, are decisive for present purposes. *Cf. Skil Corporation v. Korzen*, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994) (holding that actual, and not intended use, is decisive on the question of exempt use).

The levels of cash compensation that NAEIR actually paid to its chief information officer during its 2000 and 2001 fiscal years, in fact, exceeded median levels of compensation reflected on market surveys. Applicant Ex. No. 17B. So did the level of cash compensation that applicant paid to its vice president of corporate relations during its 2001 fiscal year. *Id.* Therefore, applicant, which bears the burden of proving all elements of its exemption claim, (People ex rel. Nordlund v. Ass’n. of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*), has

failed to establish the factual basis necessary to raise the question of whether the levels of cash compensation that it *actually paid* to its officers were excessive in light of market median data.

Furthermore, it is apparent that performance based incentives programs, such as the one that applicant employs, create conflicts of interest that are inconsistent with “charitable” impulse. These conflicts arise because the very people who receive such bonuses (i.e. applicant’s officers) also have very significant input into NAEIR’s distributional policies due to the inherent authority vested in their respective positions.

For instance, NAEIR’s chief financial officer also chairs the applicant’s financial hardship waiver committee. Tr. pp. 56-57, 84. This committee bears direct responsibility for effectuating the fee waivers and gratuitous distributions that applicant cites as examples of its “charitable” endeavors. I have already established that such fee waivers and distributions are but an incidental byproduct of applicant’s otherwise non-exempt enterprise. Nonetheless, one cannot deny that placing oversight responsibility for whatever incidental “charity” applicant dispenses in the hands of a corporate officer who receives a performance-based bonus certainly creates a conflict between that officer’s personal pecuniary interest on the one hand and applicant’s capacity to dispense “charity” on the other.

This is especially true here, because the record contains no evidence specifying the criteria by which applicant measures “performance.” Absent this evidence, modern business reality makes it logical to define “performance” in terms of an individual’s (or, in this case, an officer’s) capacity to enhance the financial success of applicant’s enterprise. Accordingly, all of applicant’s officers, including its CFO, who receive



bonuses that are based on this type of performance, clearly have vested pecuniary interests in applicant's enterprise. This in turn creates a conflict of interest within applicant's organizational structure because the very same managerial officers who maintain such profit-motivated interests are the very same managerial officers who retain day to day control over and effectuate applicant's distributional policies.

Due to this conflict, it appears that applicant has created a disincentive for its officers to approve and effectuate policies that are consistent with the dispensation of "charity." As such, I fail to see how these policies yield anything but incidental charitable acts.

Based on the above, I conclude that applicant does not qualify as an "institution of public charity" within the meaning of 35 ILCS 200/15-65(a). Therefore, those portions of the Department's initial determinations finding that the subject properties are not in exempt ownership should be affirmed.

## 2. Exempt Use

Much of the above discussion concerning legal standards for exempt ownership applies with equal force to an analysis of the exempt use requirement. Nonetheless, it bears noting that the word "exclusively," as used in Section 15-65 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

I have previously concluded that NAIER operates primarily for the non-charitable purpose of providing heightened service privileges to those of its member organizations that can afford to pay full membership fees in exchange for the increased service

privileges that they receive. Consequently, it stands to reason that the subject properties, at which applicant conducted all such operations throughout the tax year in question, were not “exclusively” or primarily used for charitable purposes as required by 35 ILCS 200/15-65. Therefore, those portions of the Department’s initial determinations finding that the subject properties are not in exempt use should be affirmed.

B. Exemption Under 35 ILCS 200/15-65(b)

Section 15-65(b) of the Property Tax Code, 35 ILCS 200/15-65(b), provides for the exemption of property owned by “[b]eneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious, or beneficent activities of the owner, whether or not such activities occur on the property.” 35 ILCS 200/15-65(b).

As is the case with all exemption statutes, Section 15-65(b) must be strictly construed, with all doubts and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Ass’n of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. In the present context, this means that the property to be exempted must be: (a) owned by an entity that qualifies as a “beneficent and charitable organization[;]” and, (b) used for the narrow set of purposes set forth in Section 15-65(b).

Webster’s Third New International Dictionary (1993) defines the word “beneficent” as being synonymous with the word “charitable.” Therefore, applicant, which does not qualify as an “institution of public charity” within the meaning of Section

15-65(a), also does not satisfy the exempt ownership requirement contained in Section 15-65(b). Furthermore, although applicant distributes donated goods at the subject properties, it does so for a fee paid by its members, and its officers obtain substantial pecuniary benefit from its enterprise. Therefore, it is factually impossible for applicant to use “all” of the income from its distributional activities to support activities that qualify as “charitable” or “beneficent.”

In addition, the reference to “religious” activity contained in Section 15-65(b) does not apply herein because applicant is not organized for purposes of conducting public worship, Sunday school or other “religious”-type endeavors. *See, People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession*, 249 Ill. 132, 136-137 (1911). (holding that, as applied to uses of property, a “religious purpose” means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.”). Thus, for all the above reasons, the subject properties do not satisfy either the exempt ownership or the exempt use requirements contained in Section 15-65(b).

Moreover, our courts have yet to apply Section 15-65(b) outside the context of thrift shops operated by *bona fide* charitable or religious organizations. *Gift Music Ministries, Inc. v. Department of Revenue*, Docket Number 93-L-50314 (Circuit Court of Cook County, August 1, 1995). *See also, First Presbyterian Church of Dixon v. Zehnder*, 306 Ill. App. 3d 1114, 1117 (2<sup>nd</sup> Dist. 1999). NAIER does not qualify as a *bona fide* charitable or religious organization. Nor does applicant actually make any sales or resales of donated goods at the subject properties.

Consequently, for all of these reasons, NAIER does not operate as the type of “thrift store,” that Section 15-65(b) is designed to exempt.<sup>18</sup> Therefore, that provision is inapplicable herein.

C. Exemption under 35 **ILCS** 200/15-65(c)

Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/15-65(c), provides for the exemption of property owned by “old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.” 35 **ILCS** 200/15-65(c).

The plain language of Section 200/15-65(c), which, like all exemption statutes must be strictly construed in favor of taxation, (People *ex rel.* Nordland v. Ass’n of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*), specifies that the class of owners whose property is subject to exemption thereunder is limited to: (a) old people's homes; (b) facilities for persons with a developmental disability; and, (c) not-for profit organizations providing services or

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18. For further analysis concerning “thrift shops” and the exempt status thereof, *see*, Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

facilities related to the goals of educational, social and physical development ...[.]” 35 ILCS 200/15-65(c).

NAEIR’s articles of incorporation and bylaws fail to disclose that it is organized for purposes of operating an old people’s home or a facility that provides therapeutic or rehabilitational services to the developmentally disabled. In addition, the General Assembly’s use of the conjunction “and” establishes that applicant cannot qualify as an exempt owner under Section 15-65(c) unless it presents affirmative evidence proving that its programs further *all three* of the “educational, social *and* physical development” goals specified in that provision. 35 ILCS 200/15-65(c). [emphasis added].

Applicant attempts to bootstrap itself onto the position of its members for who it does a service for compensation. It is the member organizations, and not the applicant itself, which actually provide the services that further these goals. Therefore, applicant cannot qualify applicant as an exempt owner for purposes of Section 15-65(c).

In addition, Section 15-65(c) plainly requires that applicant’s bylaws must contain a fee waiver provision. NAEIR’s bylaws did not contain such a provision throughout the tax year in question. Each tax year constitutes a separate cause of action for exemption purposes (People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987)). Therefore, the fact that applicant added a fee waiver provision to its bylaws during a tax year subsequent to 2000 is irrelevant to this case in the first instance and legally insufficient to establish that the subject properties qualify for

exemption from 2000 real estate taxes under 35 ILCS 200/15-65(c) in the second. Thus, applicant is not entitled to relief under that provision herein.

D. Final Considerations

The cases that applicant cites in its post-hearing brief, Decatur Sports Foundation v. Department of Revenue, 177 Ill. App.3d 696 (4<sup>th</sup> Dist. 1988); Vermilion County Museum Society v. Department of Revenue, 273 Ill. App.3d 675 (4<sup>th</sup> Dist. 1995); Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App.3d 298 (1<sup>st</sup> Dist. 2000); Randolph Street Gallery v. Zehnder, 315 Ill. App.3d 1060 (1<sup>st</sup> Dist. 2000); Arts Club of Chicago v. Department of Revenue, 334 Ill. App.3d 235 (1<sup>st</sup> Dist. 2002); Quad Cities Open, Inc v. City of Silvis, 337 Ill. App.3d 251 (3<sup>rd</sup> Dist. 2003), do not alter any of the preceding conclusions.

The Quad Cities case is not applicable for several reasons. First, the primary issue decided in Quad Cities was whether a non-profit corporation was entitled to a declaratory judgment finding it to be exempt from a municipal game tax imposed on “athletic contests carried on for gain.” 337 Ill. App.3d 252-253. Although the court did grant the declaratory judgment, it did so without any direct reference to, or analysis of, the guidelines for “charitable” status set forth in Methodist Old People’s Home v. Korzen. Rather, the court relied on an Ohio case, Akron Golf Charities, Inc. v. Limbach, 34 Ohio St.3d 11 (1987), to hold that the sporting event in question, a professional golf tournament, did not constitute an enterprise “carried on for gain” because its primary purpose was to raise money for local charities. Quad Cities, *supra*, at 251, 258-260.

In reaching this conclusion, the Quad Cities court specifically stated that “any doubt as to the application of taxing laws must be strongly construed against the

government and in favor of the taxpayer.” Quad Cities, *supra*, at 256. This statement is completely antithetical to the well settled law that applies in property tax exemption cases, which, as previously stated, mandates that all doubts be resolved *in favor of* taxation and *against the taxpayer*. People Ex Rel. Nordland v. the Ass’n of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

These rules of construction are absolutely fundamental to property tax exemption cases because they serve to protect public treasuries against unwarranted lost revenue costs. Therefore, it is legally inappropriate to apply any of the analysis contained in Quad Cities to the property tax exemption issues raised herein.

Such issues include, *inter alia*, whether the performance-based incentive bonuses that applicant pays to its officers provide pecuniary “gain” to those associated with applicant’s enterprise. That issue was decided against the applicant because the basic economic purpose of these bonuses is to provide those who receive them with personal monetary rewards that are directly tied to the financial success of applicant’s enterprise. For this reason, the present case is very different from Quad Cities and all of the other cases cited by NAEIR because none of the applicants in those cases paid the types of performance-based incentives that disqualify NAEIR from “charitable” status.

Nor did any of the applicants in the cited cases distribute their services in a manner that allows member organizations, such as those that belong to NAEIR, to receive levels of benefits and privileges that increase in direct proportion to the amount of membership dues paid. For instance, the applicant in Randolph Street, a visual arts gallery, adhered to a “pay as you can” policy whereby it allowed all persons who could

not afford to pay full admission fees to attend performances simply by tendering whatever part of that fee they could afford to pay. Randolph Street, *supra*, at 1067.

In contrast, NAEIR adheres to what can only be characterized as a “pay-for-what-you-get” policy. As discussed above, the practical effect of this policy is to provide organizations that cannot afford to pay full membership fees with benefits that are markedly reduced as compared to the benefits and privileges NAEIR confers on organizations that can afford to receive enhanced privileges and benefits in exchange for greater fee payments.

This distinctly non-charitable aspect of NAEIR’s *modus operandi* is what distinguishes NAEIR from the applicants in all of the cases that it cites. Moreover, it is well settled that applicant’s exemptions from Illinois use and federal income taxes are not decisive for present purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970). Therefore, applicant’s reliance on these cases and exemptions is misplaced.

Based on the foregoing, I conclude that the subject properties are not owned by the types of entities necessary to qualify them for exemption from 2000 real estate taxes under Sections 15-65(a), 15-65(b) and/15-65-(c) of the Property Tax Code. Nor are said properties “exclusively” or primarily used for the “charitable” purposes required to qualify them for exemption from such taxes under Section 15-65. Therefore, both of the Department’s initial determinations in these matters should be affirmed.



WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Knox County Parcel Index Numbers 99-09-226-004, 99-16-326-008 and 99-16-326-009 not be exempt from 2000 real estate taxes.

Date: 7/30/2003

Alan I. Marcus  
Administrative Law Judge